IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3790 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PT CHACKO
Versus
MANAGING DIRECTOR

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Appearance :
MR GM JOSHI for the Petitioner
NOTICE SERVED BY DS for Respondent(s) : 1,
MR BR GUPTA for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 07/12/2007

ORAL JUDGMENT

1. Heard Shri G.M. Joshi, learned counsel for the petitioner and Mr. H.S. Munshaw, learned counsel for the respondent Corporation.

2. The petitioner has approached this Court under Article 226 of the Constitution of India seeking writ of Mandamus or any other writ in the nature of Mandamus to the respondent Corporation for complying with directions of this Court passed in the judgment and order in Letters Patent Appeal No.249 of 1983 dated 28th February to 3rd March, 1992.

3. The facts, in brief, deserve to be set out for appreciating the controversy in the matter.

3.1. The petitioner originally came to be appointed as Clerk-cum-Typist at 'Gurjari' Retail Emporium. The petitioner worked with zeal and enthusiasm. As he was efficient in performing his duties, the General Manager of 'Gurjari' Retail Emporium, retail depot of the respondent Corporation, recommended that the post of Sales Co-ordinator, higher than the post of Supervisor, be created as the Corporation was getting continuous orders from the Government Departments and other factors required prompt and proper follow-up, the post of Sales Co-ordinator was suggested to be created. The Manager also suggested the name of the present petitioner for consideration for the said post as he was enthusiastically and diligently carrying out his duties and the performance of the petitioner was termed to be the best. The letter is produced at Annexure-'B' page 18 to the petition.

3.2. The petitioner was, thereafter, designated

as Sales Co-ordinator by the Managing Director of the Corporation on 5.10.1982. The petitioner, since then, performed various duties in the Corporation as Sales Co-ordinator. The Co-ordination work was performed by the petitioner and the petitioner was given charge of Exhibition to be held in cities, like Calcutta, Mumbai, Chennai, etc.

3.3. As per the say of the petitioner, on account of feeling frustration among the other staff members due to the rise of the petitioner, he was subjected to departmental inquiry and was suspended, which, ultimately, resulted into dismissal of the petitioner, vide order dated 24.6.1983.

3.4. The petitioner challenged the same by Special Civil Application No.2922 of 1983 in this Court, which came to be rejected by this Court [Coram: S.L. Talati, J.(as he then was)] on 14/15.6.1983. The petitioner preferred Letters Patent Appeal No.249 of 1983, which came to be allowed by this Court [Coram: S.B. Majmudar, Actg.C.J. & S.D. Dave, J. (as they were then)] vide judgment and order dated 28th February to 3rd March, 1992. The Division Bench of this Court accepted the Letters Patent Appeal and directed the respondent Corporation to pay to the petitioner full back wages in the time scale of Rs.260-400, revised to Rs.950-1500, with all necessary increments from the date of the dismissal till the actual reinstatement. However, the Corporation was directed to deduct an amount

equivalent to Rs.400/- per month from 1.1.1989 till actual reinstatement. After that, the balance of back wages and all other legally permissible benefits were ordered to be paid to the original petitioner within eight weeks from the date of the receipt of the writ. The Corporation was also directed to forthwith reinstate the petitioner in the service with continuity of service, as stated in the judgment. Paragraph 12 of the decision of the Letters Patent Bench contains the relief granted to the petitioner and entitlement of the benefits admissible to the petitioner on his reinstatement as per the order of the Division Bench.

3.5. Decision of the Division Bench dated 28th February to 3rd March, 1992 in Letters Patent Appeal No.249 of 1983 was impugned by the respondent Corporation before the Supreme Court by preferring a Civil Appeal, which also came to be dismissed and the part of the operative portion is reproduced on page 5 para 7 of the petition, where-under, it is categorically stated that the petitioner was to be reinstated treating the dismissal order as null and void on his original post prior to the impugned dismissal order.

3.6. The Corporation issued an order on 18.12.1996. The petitioner was reinstated in service as Clerk-cum-Typist, the post which he held at the time of dismissal from service in the revised pay scale of Rs.950-1500 and he was asked to resume the

duties within three days. Accordingly, the petitioner resumed his duties and he was given posting.

3.7. The petitioner addressed a communication, indicating that his salary should also have been revised appropriately and he should have been reinstated as Sales Co-ordinator in accordance with the order of this Court, confirmed by the Apex Court. To which, the Corporation replied by letter dated 15.1.1997 informing the petitioner that the post of Sales Co-ordinator was being temporary arrangement and he has to be reinstated as Clerk-cum-Typist on his original post. With regard to payment of back wages, it was mentioned that the same will be paid to him when he resumes the duty.

3.8. The petitioner had to move necessary Misc. Civil Application No.170 of 1997, as he was not being reinstated as per the orders of this Court and, ultimately, the learned counsel for the Corporation had to make a statement, as it appears from communication dated 1.2.1997 produced by the petitioner on page 77- Annexure-'G' and, accordingly, the petitioner was posted as Clerk-cum-Typist, designated as Sales Co-ordinator, in the revised pay scale of Rs.950-1500.

4. Mr. Joshi, learned counsel for the petitioner, submitted that the respondent has not complied with the order of this Court inasmuch as the benefits, which were being admissible to the petitioner, have

been wrongfully denied. The Corporation has not produced any material indicating that the petitioner incurred any disqualification as such for being considered and given the higher pay scale as per the prevailing promotion policy in the Corporation nor the Corporation has denied that there did not exist any such policy for according the higher grade pay scale on completion of several number of years of services. The petitioner has given the names of the persons in whose favour such benefits have been made. The Corporation fell back upon the misconduct, which has resulted into dismissal of the petitioner, which has been set aside by the Court with appropriate directions. Not giving the benefits by the respondent Corporation, therefore, would be arbitrary, capricious and violative of Articles 14 and 16 of the Constitution of India. The petitioner has resigned from services of the Corporation on 23.6.1997. So, till date of his resignation, the consequential benefits ought to have been given to the petitioner.

5. The Court has taken into consideration the affidavit-in-reply and sur-rejoinder filed on behalf of the Corporation. Close perusal of the same goes to show that the Corporation is holding the original so-called misconduct of the petitioner for denying him the admissible benefits. It deserves to be noted that, in sur-rejoinder, the deponent has admitted that the Scheme of higher grade pay scale admissible to the State employees on completion of their 9

years, 18 years and 27 years of services vide Resolution dated 5.7.1991 and modified vide Resolution dated 16.8.1994 is also adopted to the employees of the Corporation. On that ground also, it can well be said that the petitioner would have been eligible for receiving the benefits of the said higher grade pay scale.

6. The plea of the learned counsel for the respondent Corporation that as the petitioner was proceeded against his misconduct and he was found to be ineligible for receiving the higher grade pay scale, cannot be sustained on the ground that the said subject matter which has resulted into dismissal of the petitioner from service has been set aside by this Court and is confirmed by the Apex Court, therefore, the Corporation cannot be permitted to fall back upon the so-called misconduct and the resultant order has been quashed and set aside. In fact, the observations of the Division Bench of this Court in para 12, deserve to be set out as under:

> “12. Now the question remains what appropriate further relief can be given to the original petitioner. It is clear that on our findings on condition Nos. 1 and 3, the domestic inquiry would get vitiated both from the stage where the copy of the Inquiry Officer's report was not furnished to the original petitioner alongwith the final show cause notice and also at a prior stage during the inquiry itself when the original petitioner was not permitted the services of an expert advocate, who could

cross-examine the hand writing expert. This would have necessitated directions to the respondent Corporation to hold inquiry afresh from the stage it got vitiated, but that situation would not survive in the light of our conclusion and decision on condition No.2. To recapitulate once we hold that legally permissible evidence in the domestic inquiry in connection with the charges levelled against the original petitioner is totally absent and the findings reached by the Inquiry Officer and the Disciplinary Authority are based on no evidence, nothing further would survive and the charges would not remain proved against the original petitioner. Consequently, there will be no occasion for the respondent Corporation to hold a fresh inquiry against the original petitioner for those charges as that would amount to giving a second innings to the respondent Corporation. The respondent Corporation had full opportunity to prove the charges against the original petitioner in any legally permissible way. If they missed that opportunity they cannot only on account of their own default be given a second chance. Second chance could have been given given to them if earlier chance was not availed of by them for no fault of theirs. This is not the situation here. Hence as a result of our findings on contention No.2, the conclusion becomes inevitable that these charges have not been legally proved against the original petitioner and the curtain must drop on these charges and inquiry in connection with the charges must be consigned to record room and it must be treated to be a matter of history. In short, no opportunity can be reserved for the respondent Corporation to prove the charges once again against the original petitioner. Under these circumstances, the respondent Corporation has to be directed to treat the dismissal order as null and void and to reinstate the

original petitioner in service forthwith on the same post on which he was serving with the respondent Corporation prior to the impugned dismissal order. That will be with continuity of service without any break and would entitle the original petitioner to get all the monetary benefits flowing from this direction. The impugned dismissal order shows that the original petitioner was dismissed from service on 24.6.1984 and he was shown to have been on suspension prior thereto. The suspension order, which is also on the record of the case, (which is at Annexure-B to the petition) shows that Shri Chacko (appellant) was working as Clerk-cum-Typist and re-designated as Sales Co-ordinator, when he was suspended from service on 2.3.1983. Thus it becomes clear that during suspension and even at the time of the dismissal, the original petitioner was shown as working as Clerk-cum-Typist and re-designated as Sales Co-ordinator. Even the charge-sheet which is at Annexure-C to the petition, shows that he was working as Clerk-cum-Typist in the Gujarat Handicrafts & Handloom Development Corporation Ltd. with effect from 6.1.80 and he was designated as Sales Co-ordinator at Gujarat, Ahmedabad with effect from 1.10.82. Thus it becomes obvious that on the date of the impugned dismissal order, the original petitioner was under suspension and he was suspended while he was working as Clerk-cum-Typist and when he was designated as a Sales Co-ordinator. Hence, his reinstatement also will be as a Clerk-cum-Typist designated as Sales Co-ordinator with continuity of service all through-out. It is also made obvious that whatever salary was being drawn by the appellant in the time scale with necessary revisions will be made available to the original petitioner with all increments in the said time scale. We are told by the learned counsel for the original petitioner that at the time of dismissal the appellant's was

> getting the time scale of Rs.260-400, which was revised to Rs.950/- 1500/- subsequently. Therefore, the reinstatement of the original petitioner would be in the aforesaid time scale of Rs.260-400 as revised to Rs.950-1500 and will be entitled to get all the increments in the said time scale, which became available from time to time to the concerned employees, who were working in the said time scale. It is also made clear that it would be open to the original petitioner on the basis of the present order of reinstatement and continuity of service, to agitate his contention before the respondent Corporation that he became entitled to be substantively promoted as Sales Co-ordinator in the services of the respondent Corporation. That being a separate issue is kept open."

7. Thus, in view of the aforesaid observations, it becomes amply clear that the petitioner was eligible for receiving the benefit of higher pay scale. The learned counsel for the respondent Corporation has not pointed out any other material, except the misconduct for denying him the benefit of higher pay scale and other admissible benefits on his reinstatement.

8. It deserves to be mentioned at this stage that the petitioner's plea for fixing the scale so far as the post of Sales Co-ordinator is concerned, is not acceptable in view of the fact that the post of Sales Co-ordinator had never been in existence nor was a sanctioned post. It was clearly temporary arrangement, where-under the petitioner

was required to discharge his duties as Sales Co-ordinator and was required to co-ordinate the various activities. In view of that, the submission with regard to according the petitioner the fixation of salary and pay on the basis of the Sales Co-ordinator's post, which is not in existence, cannot be accepted and is, therefore, rejected. However, as stated hereinabove, the petitioner though was working as Clerk-cum-Typist, was designated as Sales Co-ordinator and, initially, though he was required to work as Clerk-cum-Typist, later on, after the petitioner had to file Misc. Civil Application No. 170 of 1997, he was even designated, that itself would not entitle the petitioner for larger relief of fixing the salary and pay, etc. for the post which had never existed at the relevant time, but, the scale admissible to the Clerk-cum-Typist and the consequential benefits, which are admissible to the post of Clerk-cum-Typist, have been denied to the petitioner, even on that ground, the petitioner was subjected to departmental proceedings, which ultimately resulted into dismissal, especially when the dismissal is set aside and it was clear that the order of dismissal was treated to be void and the petitioner was to be reinstated as if the said order had never been passed. In view of this, the petitioner was placed by the Court's order in the situation where the disciplinary proceeding has never been started. It was the Managing Director who had designated the petitioner as Sales Co-ordinator, which goes to

show that the petitioner was efficient and diligent in his duties.

9. It is reiterated at the cost of repeatation that no other positive disqualification on the part of the petitioner was pleaded by the learned Counsel for the Corporation and, therefore, this Court is of the considered view that the petition deserves to be allowed and the Corporation is required to be directed to accord the benefits admissible to the post of Clerk-cum-Typist at the relevant time without taking into consideration the factum of the petitioner being subjected to the disciplinary proceedings.

10. The dues of the petitioner shall be paid within 30 days from the receipt of the order. The petition is disposed of. Rule is made absolute accordingly.

(S.R.BRAHMBHATT, J.)

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